

LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

April 16, 2012

Deputy Director Mark De Bie
Dept of Resources Recycling and Recovery (CalRecycle)
1001 I Street
Sacramento, CA 95812

By email to:

Mark.DeBie@CalRecycle.ca.gov
and publicmeetings@calrecycle.ca.gov

RE: New Full Solid Waste Facilities Permit for Santa Maria Integrated Waste Management Facility in Santa Barbara County – SWIS No. 42-AA-0076

Dear Deputy Director De Bie,

This office represents the Gaviota Coast Conservancy (GCC) in this matter. GCC is a Santa Barbara-based non-profit organization dedicated to the protection of the natural, cultural, recreational, and agricultural resources of the Gaviota Coast – the largest remaining stretch of relatively undeveloped coastline in Southern California. GCC has long been a vocal advocate for closing the Tajiguas Landfill located on the Gaviota Coast, and our interest in the Santa Maria Integrated Waste Management Facility at Los Flores (SMIWMF) stems from the reality that it may ultimately receive solid waste currently landfilled at Tajiguas. Indeed that is expressly incorporated in the Statement of Overriding Considerations adopted by the Lead Agency (City of Santa Maria). We have reviewed the proposed Solid Waste Facilities Permit (SWFP), Environmental Impact Report (EIR), and other relevant documents and have identified some specific concerns that we ask you to address and resolve before concurring with the issuance of the SWFP.

Specifically, although the EIR for the Project finds significant and unavoidable Project construction and operational impacts to biological resources and air quality, the EIR fails to analyze the Project's consistency with applicable General Plan policies requiring the preservation of biological resources and reduction in pollutant emissions. The City of Santa Maria's findings with respect to conformity with the General Plan impermissibly excluded the Conservation and Open Space Element, which contains the applicable policies protecting biological resources and air quality. Moreover, the City made no findings of consistency with the County's General Plan, despite the fact that the Project site is located within the unincorporated County and not the City of Santa Maria. The failure of the City of Santa Maria to conduct this analysis and make required findings resulted in the LEA providing incomplete information to CalRecycle respecting the Project's General Plan compliance, which in turn precludes CalRecycle's concurrence in the SMIWMF SWFP. (*See* 27 CCR 21685 (b)).

We acknowledge that finding a place for Santa Maria's waste following the impending closure of the existing Santa Maria Regional Landfill is critically important. We are not suggesting at this time that you deny the permit, rather we ask that you request the missing information from the LEA, Lead Agency, and County of Santa Barbara before considering the permit further. Given that required administrative processes at the Regional Water Quality Control Board (RWQCB) and Air Pollution

Control District (APCD) are not yet even under way, CalRecycle does not risk delaying the construction of the SMIWMF by conducting additional inquiry on these critically important General Plan conformity issues. We note that the Staff Report CalRecycle produced for this item identifies June 11, 2012 as the deadline for CalRecycle's action on the proposed permit. Accordingly we request that CalRecycle continue this item to its monthly meeting in May, and in the interim request that the LEA and Local Agency submit and make available to the public the missing information identified herein.

1. Inadequate Information Submitted on General Plan Conformity

27 CCR 21685 (b) precludes CalRecycle from concurring in the issuance of the proposed SWFP unless it receives information "that the facility is consistent with the city or county General Plan and compatible with surrounding land use, in accordance with Public Resources Code §50000.5." Public Resources Code § 50000.5 in turn provides that "no person shall establish or expand a solid waste facility or transformation facility unless the city or county in which the site is located makes a finding that the establishment or expansion of the facility is consistent with the applicable general plan of the city or county." The City of Santa Maria's findings regarding the facility's consistency with the city's General Plan however are clearly incomplete (*See* Exhibit 1, Resolution of the Planning Commission of the City of Santa Maria Finding that the Proposed Santa Maria Integrated Waste Management Facility Project is in Conformity with the City of Santa Maria General Plan). Specifically, the resolution of the Planning Commission (which appears to be the only document addressing this Project's General Plan conformity other than the EIR) entirely fails to mention conformity with the Conservation Element of the City's General Plan. Additionally, the City entirely failed to assess the Project's compliance with the County of Santa Barbara's General Plan for the site located within the unincorporated County. Discussed further below, these failures preclude CalRecycle's concurrence with the proposed SWFP.

a. Conflicts with Biological Resource Protection Policies in the City of Santa Maria's General Plan

The Los Flores site that the City of Santa Maria approved for the SMIWMF includes special status plant communities including central maritime chaparral, Central Cost arroyo willow forest, and valley needlegrass grassland. (SMIWMF EIR p. IV.C-2). Protected wetlands, riparian scrub, and mulefat scrub communities are also found onsite. (*Id.*). Over 3,200 individual coast live oak trees would be lost as a result of project implementation, resulting in the associated loss of habitat for several special status species including forging and nesting habitat for birds, and nesting and roosting sites for raptors and bats. (*Id.* pp. IV.C-32 - 33). The EIR prepared for the SMIWMF found significant and unavoidable (Class I) impacts to biological resources including removal of oak trees, impacts to wildlife corridors, impacts to vernal pool fairy shrimp (a threatened species), and cumulative impacts to biological resources. (*Id.*, p. IV.C-1).

The City of Santa Maria's Conservation and Open Space Element of its General Plan includes the following requirements protecting biological resources that are directly applicable the SMIWMF:

GOAL 3 - BIOLOGICAL RESOURCES: Preserve natural biological resources and expand the Santa Maria Urban Forest.

POLICY 3: Protect and preserve biological resources, and expand the urban forest within the Planning Area in order to enhance the quality of life in the Santa Maria Valley.

Objective 3.1.a - Plant and Animal Taxa and Habitats: Ensure that all development near sensitive habitats avoids significant impacts to these areas.

Contrary to the requirements in these provisions, the SWIMWF fails to protect and preserve biological resources, and includes development that fails to avoid significant impacts to plant and animal habitats, as clearly demonstrated by the Project's Class I impacts to biological resources. The SMIWMF EIR briefly references the above Goal 3 and Policy 3 (though not Objective 3.1.a) but does not undertake any analysis of the Project's consistency with these applicable Conservation Element provisions. (*See* SMIWMF EIR p. IV.C-49). The City's Resolution finding Conformity with the City of Santa Maria General Plan does not even reference the above goal, policy, and objective. In fact the Resolution lacks *any* reference to the Conservation and Open Space element. (*See* Exhibit 1).

b. Conflicts with Air Quality Protection Policies in the City of Santa Maria's General Plan

The City of Santa Maria General Plan Conservation and Open Space Element includes the following requirements protecting air quality that are directly applicable the SMIWMF:

GOAL 2 - AIR QUALITY: Improve and maintain healthful air quality in Santa Maria and Northern Santa Barbara County.

POLICY 2: Improve and maintain the quality of air to insure the health of all residents in the Santa Maria Valley by reducing mobile and stationary source air pollutant emissions through the use of efficient land use patterns, the implementation and promotion of alternative transportation modes and other transportation system management programs.

The SWIMWF is inconsistent with this goal and policy insofar as it results in the generation of air contaminant emissions including equipment exhaust, fugitive dust, disposal vehicle and other transportation emissions, and landfill gas generation and flaring, that exceed the Santa Barbara Air Pollution Control District (SBCAPCD) thresholds of significance. (SMIWMF EIR p. IV.B-18). The EIR concludes the Project will have significant and unavoidable (Class I) Greenhouse Gas (GHG) emissions and cumulative impacts to air quality and global climate change. Accordingly the Project

degrades the air quality of Santa Maria and Northern Santa Barbara County and conflicts with the above Goal and Policy of the City of Santa Maria's General Plan.

Similar to the biological resource policies discussed above, the EIR only restates Policy 2, above (not Goal 2) and includes no analysis whatsoever of the Project's consistency with these General Plan requirements. Moreover, the City's Resolution finding Conformity with the City of Santa Maria General Plan does not even reference the above goal, policy, and objective, or any other requirement of the Conservation and Open Space Element. (See Exhibit 1).

c. Failure to Evaluate Consistency with the County of Santa Barbara's General Plan

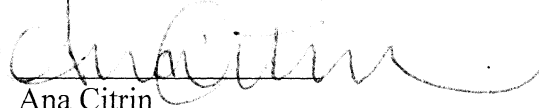
The proposed Los Flores site for the SMIWMF is located in unincorporated Santa Barbara County. While the site is owned by the City of Santa Maria, annexation is not considered as part of the Project. The City made the determination the County of Santa Barbara's General Plan does not apply to the Project because the project site is owned by the City (*see* EIR p. IV.H-2), and accordingly undertook no analysis of the Project's consistency with the County's General Plan. Given that the Project site is located within the geographic area covered by the County's General Plan, omitting any discussion or analysis of conformity with the County's General Plan appears to be unauthorized. We request that you seek clarification from the LEA, Lead Agency, and County of Santa Barbara as to the propriety of omitting this General Plan conformity analysis.

2. Conclusion

For the reasons stated herein, CalRecycle has not received information that the facility is consistent with the city and/or county General Plan as required by 27 CCR 21685 (b) and Public Resources Code § 50000.5, and may not lawfully concur in the issuance in the proposed SWFP for the SMIWMF. Accordingly, we request that CalRecycle request additional information from the LEA, Local Agency, and County of Santa Barbara regarding the Project's consistency with a) the Santa Maria General Plan's Conservation and Open Space element, and b) the County of Santa Barbara's General Plan, before taking further action on the SMIWMF SWFP.

Sincerely,

LAW OFFICE OF MARC CHYTILO



Ana Citrin

Marc Chytilo

For Gaviota Coast Conservancy

Exhibit 1: Resolution of the Planning Commission of the City of Santa Maria Finding that the Proposed Santa Maria Integrated Waste Management Facility Project is in Conformity with the City of Santa Maria General Plan (Resolution No. 2567)

CC: Dianne Ohiosumua, CalRecycle Staff Contact (Dianne.Ohiosumua@calrecycle.ca.gov)
Mike Schmaeling, LEA Contact (Mike.Schmaeling@sbcphd.org)
Steve Kahn, Project Planner, City of Santa Maria (skahn@ci.santa-maria.ca.us)
Mark Schleich, Resource Recovery & Waste Mgmt. Deputy Director
(Schleich@cosbpw.net)

RESOLUTION NO. 2567

A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF SANTA MARIA FINDING THAT THE
PROPOSED SANTA MARIA INTEGRATED WASTE
MANAGEMENT FACILITY PROJECT IS IN CONFORMITY
WITH THE CITY OF SANTA MARIA GENERAL PLAN,
SP-2010-010

WHEREAS, the Planning Commission of the City of Santa Maria held a regularly scheduled meeting on June 16, 2010, for the purpose of considering a request by the City of Santa Maria; and

WHEREAS, notice of said public hearing was made at the time and in the manner required by law; and

WHEREAS, California Government Code Section 65402(c) requires the City of Santa Maria to determine whether the planned Los Flores Integrated Waste Management Facility is in conformity with the Santa Maria General Plan; and

WHEREAS, the planned Los Flores Integrated Waste Management Facility project is presently under review by the California Department of Resources and Recycling, as well as other State and local agencies; and

WHEREAS, the General Plan discusses the provision of urban services, including the needed infrastructure, capacity, and timing; and minimizes the community risk from hazardous materials associated with this landfill.

WHEREAS, the environmental impacts of this Facility have been adequately addressed in a Final EIR (SCH#2006091069), certified on April 20, 2010; and

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Santa Maria hereby finds that the Integrated Waste Management Facility project is in conformity with the Santa Maria General Plan for the reasons stated in Exhibit A, attached hereto and incorporated by reference.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Santa Maria held June 16, 2010, by the following roll call vote:

AYES: Commissioners Andrade, Lopez, Quandt and Chairman Brown

NOES:


ABSENT: Commissioner Moats

ABSTAINED:



RODGER BROWN, CHAIRMAN
City Planning Commission

ATTEST:



PEGGY WOODS, Assistant Secretary
City Planning Commission

EXHIBIT A – General Plan Conformity of the Los Flores Integrated Waste Management Facility

EXHIBIT A

General Plan Conformity

Santa Maria Integrated Waste Management Facility
(SP-2010-010)

<u>LAND USE ELEMENT</u>	<u>Conformity Discussion</u>
<p><u>GOAL L.U.2 Urban Services</u></p> <p><i>Provide all necessary urban services and facilities for present and future City residents, which includes providing sufficient land for community facilities (i.e., fire station, police station, library, cultural center).</i></p>	<p>The proposed Integrated Waste Management Facility (IWWMF) would provide waste disposal capacity, a necessary urban service, for present and future City residents. The IWWMF would provide waste disposal capacity for approximately 90 years.</p>
<p><u>POLICY L.U.2 Infrastructure Timing</u></p> <p><i>Insure that all urban services and infrastructure are planned and provided for in a timely manner and sufficient land is reserved for this provision.</i></p>	<p>The proposed Integrated Waste Management Facility would provide waste disposal capacity to the City upon closure of the existing Santa Maria Landfill, which is expected to occur in 2015.</p>
<p><u>Goal L.U.2 Implementing Program 5</u></p> <p><i>Continue to identify the useful life of infrastructure and establish appropriate rehabilitation programs.</i></p>	<p>The proposed Integrated Waste Management Facility would provide waste disposal capacity to the City for an estimated 90 years and replace the existing Santa Maria Landfill, which is expected to close in 2015.</p>
<u>Safety Element</u>	<u>Conformity Discussion</u>
<p><u>Goal 9 Hazardous Materials</u></p> <p><i>Minimize the community's risk from potential hazards associated with hazardous materials.</i></p>	<p>The proposed Integrated Waste Management Facility (IWWMF) would not result in significant hazards to the City residents or employees of the IWWMF. In addition, it would accommodate non-hazardous hydrocarbon impacted soils and other special wastes to beneficially address impacted soils associated with oil fields inside and outside the region.</p>
<p><u>Objective 9.1.b Hazardous Waste Disposal</u></p> <p><i>Comply with law governing hazardous waste management.</i></p>	<p>The proposed Integrated Waste Management Facility (IWWMF) would comply with applicable regulations of California Code of Regulations Title 27, as well as other applicable local and state laws regarding landfill operations. In addition, the IWWMF would comply with the applicable permitting requirements of the Santa Barbara County Air Pollution Control District, the Regional Water Quality Control Board and the California Department of Resources and Recycling.</p>

<u>Resources Management Element</u>	<u>Conformity Discussion</u>
<p>Objective 10.1.d(1) - Comprehensive Solid Waste System</p> <p><i>Provide a comprehensive solid waste collection/disposal system to meet the existing and future solid waste demands in the service area.</i></p>	<p>The proposed project involves the construction and operation of a modern Class III lined landfill on a 1,774-acre site with approximately 90 years of capacity. The project is necessary to enable the City to phase out the use of and close the existing Santa Maria Regional Landfill in the next few years. The project would provide a long-term assured source of solid waste management capacity and capability to ensure compliance with City's solid waste management obligations and accommodate projected long-term waste management and disposal demand in the City and region. The project includes construction of support facilities, and environmental controls at the Integrated Waste Management Facility site, coordinated with the previously permitted construction of a transfer station at the existing Santa Maria Regional Landfill.</p>
<p>10.1.d(2) - Waste Diversion Requirements</p> <p><i>Locate a material recovery facility (MRF), transfer station and/or compost facility at the landfill to facilitate waste and disposal operations during and after landfill closure, and to facilitate the attainment of waste diversion requirements specified in AB 939.</i></p>	<p>The majority of the resource recovery operations would continue to take place at the existing Santa Maria Regional Landfill. Disposal activities at the Integrated Waste Management Facility would be similar to those currently employed at the Santa Maria Regional Landfill. Materials accepted for disposal would include non-hazardous municipal solid waste and non-hazardous hydrocarbon impacted soil. The existing Santa Maria Regional Landfill would be closed, but would continue to serve as a transfer station and resource recovery center. The proposed site plan reserves two potential locations for the future implementation of a materials recovery facility on the site.</p>
<p>Objective 10.1.d(4) - Solid Waste Disposal</p> <p><i>Support the regional efforts of Santa Barbara County to site a new landfill or other solid waste facility in northern Santa Barbara County by the end of the planning period (2010).</i></p>	<p>The proposed Integrated Waste Management Facility (IWMF) would comply with applicable regulations of California Code of Regulations Title 27, as well as other applicable local and state laws regarding landfill operations. In addition, the IWMF would comply with the applicable permitting requirements of the Santa Barbara County Air Pollution Control District, the Regional Water Quality Control Board and the California Department of Resources and Recycling</p>